

ESTTA Tracking number: **ESTTA595637**

Filing date: **03/31/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Goya Foods, Inc.
Granted to Date of previous extension	04/05/2014
Address	100 Seaview Drive Secaucus, NJ 07094 UNITED STATES

Attorney information	Stephen L. Baker Baker and Rannells PA 575 Route 28 Raritan, NJ 08869 UNITED STATES officeactions@br-tmlaw.com, s.baker@br-tmlaw.com,p.chang@br-tmlaw.com,k.hnasko@br-tmlaw.com,s.cesa ro@br-tmlaw.com Phone:9087225640
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Applicant Information

Application No	86060111	Publication date	02/04/2014
Opposition Filing Date	03/31/2014	Opposition Period Ends	04/05/2014
Applicant	GoYoGo Frozen Yogurt LLC 83 Morning Watch Road Wayne, NJ 07470 NJ		

Goods/Services Affected by Opposition

Class 035. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Self-serve frozen yogurt shop services

Applicant Information

Application No	86037364	Publication date	02/04/2014
Opposition Filing Date	03/31/2014	Opposition Period Ends	
Applicant	GoYoGo Frozen Yogurt LLC 83 Morning Watch Road Wayne, NJ 07470 NJ		

Goods/Services Affected by Opposition

Class 035. First Use: 0 First Use In Commerce: 0


All goods and services in the class are opposed, namely: Self-serve frozen yogurt shop services

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)


Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1774726	Application Date	06/17/1991
Registration Date	06/01/1993	Foreign Priority Date	NONE
Word Mark	GO GOYA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1992/12/01 First Use In Commerce: 1992/12/01 spices		

U.S. Registration No.	2502127	Application Date	04/14/2000
Registration Date	10/30/2001	Foreign Priority Date	NONE
Word Mark	GOYA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1939/08/00 First Use In Commerce: 1939/08/00 Processed fruits and vegetables; dried fruits and vegetables; meats; seafood and fish; applesauce and cranberry sauce; processed olives; dried corn husks; snack foods, namely, plantain chips, potato chips, yucca chips and pork rinds; processed nuts and processed edible seeds; jams, jellies and fruit preserves; pickles; processed garlic, processed artichokes; processed pimentos; tomato paste; processed hot peppers; soups; meat extracts, and bouillon; edible oils and fats; prepared entrees consisting primarily of meat, poultry, fish or vegetables; milk; cheese; and lard		


U.S. Registration No.	1354559	Application Date	06/18/1984
Registration Date	08/13/1985	Foreign Priority Date	NONE


Word Mark	GOYA
Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1959/04/06 First Use In Commerce: 1959/04/06 MALTA, NAMELY A NON-ALCOHOLIC MALT BEVERAGES

U.S. Registration No.	3532388	Application Date	07/09/2004
Registration Date	11/11/2008	Foreign Priority Date	NONE
Word Mark	GOYO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2005/12/25 First Use In Commerce: 2005/12/25 Processed vegetables Class 030. First use: First Use: 2008/08/17 First Use In Commerce: 2008/08/17 spices and seasonings; adobo Class 032. First use: First Use: 2005/07/24 First Use In Commerce: 2005/07/24 non-alcoholic malt beverages, namely, malta		

U.S. Registration No.	764033	Application Date	01/15/1963
Registration Date	01/28/1964	Foreign Priority Date	NONE
Word Mark	GOYA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 029, 030). First use: First Use: 1939/08/00 First Use In Commerce: 1939/08/00 Coffee, and Edible Olive Oil		

U.S. Registration No.	3001516	Application Date	07/16/2004
Registration Date	09/27/2005	Foreign Priority Date	NONE
Word Mark	...IF IT IS GOYA IT HAS TO BE GOOD		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1968/11/00 First Use In Commerce: 1968/11/00 Tomato sauce; salad dressing; hot sauce, salsa, ketchup; hot pepper spice; alimentary paste, bakery goods, barbecue sauce, biscuits, breadcrumbs, burritos, candy, capers, cereal based snack foods, spices and seasonings, tortilla chips, chocolate for baking, coffee, corn chips, cookies, crackers, custards, empanadas, enchiladas, frozen entrees consisting primarily of rice or pasta, extracts used as flavoring, fajitas, flavoring syrup, flour; grain based food beverages, food starch; flavored, sweetened gelatin desserts; honey; noodles, picante sauce, puddings, chili sauce; table syrup, taco chips, tamales; vinegar, cocoa, pastries; rice, prepared entrees consisting primarily of rice, tapioca, yeast, treacle, salt, condiments, namely, sofrito, adobo, sazón, recato, marinades and mojo; wine sauce for cooking; food extracts consisting of a combination of annatto and lard used to flavor and color foods; corn tortilla mix, corn meal, frozen confections, and cornmeal fritter mix; wine vinegar

U.S. Registration No.	942879	Application Date	03/27/1969
Registration Date	09/12/1972	Foreign Priority Date	NONE
Word Mark	...IF IT IS GOYA IT HAS TO BE GOOD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1968/11/00 First Use In Commerce: 1968/11/00 CANNED VEGETABLES		

U.S. Registration No.	1122501	Application Date	05/24/1978
Registration Date	07/17/1979	Foreign Priority Date	NONE
Word Mark	SI ES GOYA TIENE QUE SER BUENO		


Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1950/03/00 First Use In Commerce: 1950/03/00 CRACKERS


U.S. Registration No.	4210054	Application Date	03/10/2012
Registration Date	09/18/2012	Foreign Priority Date	NONE
Word Mark	SI ES GOYA TIENE QUE SER BUENO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2001/05/00 First Use In Commerce: 2001/05/00 Fruit beverages; Fruit drinks; Fruit-based beverages; Fruit-flavored beverages; Non-alcoholic beverages containing fruit juices		

U.S. Registration No.	1859228	Application Date	09/21/1992
Registration Date	10/18/1994	Foreign Priority Date	NONE
Word Mark	JOYAS DE GOYA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1994/03/00 First Use In Commerce: 1994/03/00 rice, spices and coffee		

U.S. Registration No.	1860499	Application Date	09/21/1992
Registration Date	10/25/1994	Foreign Priority Date	NONE
Word Mark	JOYAS DE GOYA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1994/03/00 First Use In Commerce: 1994/03/00 [fruit drinks,] soft drinks, and maltsyrups for beverages		

U.S. Registration No.	1689199	Application Date	03/04/1991
Registration Date	05/26/1992	Foreign Priority Date	NONE
Word Mark	GOYA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1991/01/14 First Use In Commerce: 1991/01/14 coffee		

U.S. Registration No.	3640777	Application Date	03/14/2008
Registration Date	06/16/2009	Foreign Priority Date	NONE
Word Mark	GOYA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2008/04/07 First Use In Commerce: 2008/04/07 Carry-out restaurants; Catering; Catering in fast-food cafeterias; Catering of food and drinks; Restaurant and catering services; Restaurant, bar and catering services; Fast-food restaurants; Food preparation services; Preparation of food and beverages; Restaurant services; Coffee-house and snack-bar services; Snack bars; Serving food and drinks; Contract food services		

U.S. Registration No.	3654004	Application Date	12/10/2008
Registration Date	07/14/2009	Foreign Priority Date	NONE
Word Mark	GOYA LATIN CAFÉ#		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 043. First use: First Use: 2008/04/00 First Use In Commerce: 2008/04/00 Carry-out restaurants; Fast-food restaurants; Fast-food restaurants and snackbars; Food preparation services; Restaurant services; Snack bars

U.S. Registration No.	3825092	Application Date	01/04/2010
Registration Date	07/27/2010	Foreign Priority Date	NONE

Word Mark	GOYA
Design Mark	

Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2005/10/07 First Use In Commerce: 2005/10/07 Computerized on-line retail store services in the field of foods and beverages; Retail grocery stores; Retail store services featuring foods and beverages

U.S. Registration No.	1695011	Application Date	07/30/1990
Registration Date	06/16/1992	Foreign Priority Date	NONE

Word Mark	GOYA
Design Mark	
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1965/00/00 First Use In Commerce: 1965/00/00 catering services

U.S. Registration No.	962193	Application Date	07/14/1972
Registration Date	06/26/1973	Foreign Priority Date	NONE
Word Mark	GOYA		

Design Mark	GOYA
Description of Mark	NONE
Goods/Services	Class U046 (International Class 001, 005, 029, 030, 031, 032). First use: First Use: 1939/08/00 First Use In Commerce: 1939/08/00 BEEF STEW, VIENNA SAUSAGE, CANNED FRUITJUICES, CEREAL, CORN MEAL, HOMINY, CRACKERS, EDIBLE OILS, CORN OIL, OLIVE OIL, FRUIT SYRUP, [SESAME SEED SYRUP,]GRAPEJUICE, JELLIES AND PRESERVES, MAYONNAISE, OLIVES, RICE, SOUPS, SPAGHETTI, SPICES, SALT, PEPPER, OREGANO, VINEGAR, FLAVORING EXTRACTS, MEAT SAUCE, SWEET CHOCOLATE, TOMATO SAUCE, CHEESE, CREAM OF COCONUT, CANNED VEGETABLES, PAPAYA NECTAR, PEACH NECTAR, GUAVA NECTAR, SPAGHETTI AND MEAT BALLS, MEAT SAUCE AND CONDIMENT, BREADFUIT; PREPARED SEA FOOD-NAMELY, SHRIMP, SPICED SHRIMP, AND [LOBSTER GUMBO,]CANNED FISH, PASTELES, PUERTO RICAN SANCOCHO, FRUIT COCKTAIL, PREPARED COCONUT,AND FLAN CUSTARD


U.S. Registration No.	1283430	Application Date	12/06/1982
Registration Date	06/26/1984	Foreign Priority Date	NONE
Word Mark	GOYA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1960/06/01 First Use In Commerce: 1970/06/01 Hats, Jackets and Shirts		

U.S. Registration No.	2653723	Application Date	06/05/2001
Registration Date	11/26/2002	Foreign Priority Date	NONE
Word Mark	GOYA		
Design Mark	GOYA		

Description of Mark	NONE
Goods/Services	Class 016. First use: First Use: 1968/10/15 First Use In Commerce: 1968/10/15 Pens, posters, [writing paper, printed material, namely, price lists, mail order catalogs featuring clocks, pot holders,] [aprons,] [magnetic note pads, note pads, cooking utensils, clothing, backpacks, toys, key rings, bibs for children,] drinking utensils, [cooler bags, writing instruments and umbrellas; notepads,] and cookbooks

U.S. Registration No.	3570054	Application Date	08/05/2008
Registration Date	02/03/2009	Foreign Priority Date	NONE

Word Mark	GOYA
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Design Mark	
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Description of Mark	NONE
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Goods/Services	<p>Class 029. First use: First Use: 1939/08/00 First Use In Commerce: 1939/08/00 Applesauce; Artichoke paste; Bouillon; Cheese; Cheese food; Chili; Cranberry sauce; Dairy products excluding ice cream, ice milk and frozen yogurt; Dried fruit and vegetables; Dried fruit mixes; Dried fruits; Dried meat; Edible fats; Edible oils; Fish; Fish croquettes; Frozen fruits; Frozen vegetables; Fruit paste; Fruit preserves; Fruit-based snack food; Instant or pre-cooked soup; Jams; Lard; Meat; Meat extracts; Milk; Olive oil; Pickled vegetables; Pork; Pork rinds; Poultry; Preserved fruits; Processed artichokes; Processed coconut; Processed meat; Processed olives; Processed vegetables; Seafood; Snack mix consisting primarily of processed fruits, processed nuts and/or raisins; Soups; Vegetable chips; Vegetable oils; Vegetable-based snack foods; vegetable, fish, and meat croquettes</p> <p>Class 030. First use: First Use: 1939/08/00 First Use In Commerce: 1939/08/00 Alimentary paste; Bakery desserts; Bakery goods; Barbecue sauce; Burritos; Candy; Capers; Chocolate; Chocolates and chocolate based ready to eat candies and snacks; Cocoa; Coffee; Corn fritters; Custards; Dumplings; Empanadas; Enchiladas; Fajitas; Fish dumplings; Flour; Food seasonings; Frozen confections; Grain-based food beverages; Grain-based snack foods; Hominy; Honey; Hot sauce; Marinades; Mixes for bakery goods; Mixes for making baking batters; Mixes for making batter for hush puppies; Mixes for making batters for fried foods; Noodles; Pastries; Pepper; Picante sauce; Rice; Rice-based snack foods; Salsa; Sauces; Seasoned coating for meat, fish, poultry; Seasoned coating mixtures for foods; Seasonings; Snack cakes; Spices; Taco chips; Tacos; Tamales; Tapioca; Tomato sauce; Tortilla chips; Tortillas; Vinegar; Wine vinegar</p> <p>Class 032. First use: First Use: 1959/04/06 First Use In Commerce: 1959/04/06 Fruit nectars; Fruits drinks and fruit juices; Non-alcoholic malt beverage; Soft</p>
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	drinks; Syrups for making soft drinks;Vegetable juice
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Attachments	78004128#TMSN.gif(bytes) 78448554#TMSN.jpeg(bytes) 78451791#TMSN.jpeg(bytes) 72322981#TMSN.gif(bytes) 85566098#TMSN.jpeg(bytes) 77421878#TMSN.jpeg(bytes) 77630588#TMSN.jpeg(bytes) 77904649#TMSN.jpeg(bytes) 72429883#TMSN.gif(bytes) 76267384#TMSN.gif(bytes) Baker-Rannells140331171915.pdf(179386 bytes) 77539854#TMSN.jpeg(bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Stephen L Baker/
Name	Stephen L. Baker
Date	03/31/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GOYA FOODS, INC.

Opposer,

v.



Mark:

Serial No.: 86060111

Filed: September 10, 2013

Mark: GOYOGO FROZEN YOGURT
OUR INGREDIENTS YOUR
CREATION

Serial No.: 86037364

Filed: August 14, 2013


GOYOGO FROZEN YOGURT LLC

Applicant.

NOTICE OF OPPOSITION PURSUANT TO 15 U.S.C. § 1063


Opposer, GOYA FOODS, INC. ("Opposer"), by its attorneys Baker and Rannells, PA, allege on knowledge as to its own acts and otherwise on information and belief and as grounds for the opposition as follows:

1. Opposer believes that allowing application Ser. Nos 8606011 and 8603737364 for **GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION** (both word mark and design mark), to proceed to registration will cause Opposer damage:

MARK	SERIAL NO.	GOODS	FILING DATE
	86060111	Class 35: Self-serve frozen yogurt shop services.	September 10, 2013
GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION	86037364	Class 35: Self-serve frozen yogurt shop services.	August 14, 2013

2. Opposer is a corporation organized and existing under the laws of the State of Delaware, doing business at 100 Seaview Drive, Secaucus, New Jersey 07096.

3. Applicant, GOYOGO FROZEN YOGURT LLC ("Applicant") is a limited liability company formed under the laws of New Jersey, doing business at 83 Morning Watch Road, Wayne New Jersey 07470.

4. On August 14, 2013, Applicant filed the above identified applications for GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION (the "Applicant's Marks") as service marks for the services set forth above ("Applicant's Services"). On September 10, 2013, Applicant filed the above identified application for  (the "Applicant's Marks") as trademark for goods set forth above ("Applicant's Services").

5. Opposer is the owner of the mark GOYA, and variations thereof (collectively "Opposer's Mark") as a trademark, trade name, and as a service mark as applied to a wide range of food and beverage goods directed to wholesale and retail consumers.

6. Opposer is now and for many years has been trading as and known by the Opposer's Mark and trade name, identifying Opposer as the source of a wide variety of goods, including foods and beverages, which are substantially identical to and generally related to Applicant's Services.

7. Opposer is now and for many years has been trading as and known by the Opposer's Mark and trade name, identifying Opposer as the source of a wide variety of food and beverage goods, which are substantially identical to and generally related to Applicant's Services.

8. Opposer is now and for many years prior to any date which may be claimed by Applicant, engaged in the use of Opposer's Mark and trade name on and in association with Opposer's Goods and Services, including *inter alia*, those identified above in paragraph 5 and below in paragraph 10.

9. Since long prior to any date which may be claimed by Applicant, Opposer has been and is now engaged in the use of Opposer's Mark and trade name on and in association with Opposer's Goods and Services including *inter alia*, those identified in paragraph 5, and 10 below, in interstate commerce.

10. Opposer is the owner of, *inter alia*, the following U.S. trademark registrations, all of which are in good order, and in the name of and owned by Opposer:

MARK	REGISTRATION NO.	GOODS
GO GOYA*	1774726	<u>Class 30</u> – Spices
GOYA*	2502127	<u>Class 29</u> - Processed fruits and vegetables; dried fruits and vegetables; meats; seafood and fish; applesauce and cranberry sauce; processed olives; dried corn husks; snack foods, namely, plantain chips, potato chips, yucca chips and pork rinds; processed nuts and processed edible seeds; jams, jellies and fruit preserves; pickles; processed garlic, processed artichokes; processed pimentos; tomato paste; processed hot peppers; soups; meat extracts, and bouillon; edible oils and fats; prepared entrees consisting primarily of meat, poultry, fish or vegetables; milk; cheese; and lard.
GOYA*	1354559	<u>Class 32</u> - Malta, namely, a non-alcoholic malt beverage.
GOYO	3532388	<u>Class 29</u> - Processed vegetables; <u>Class 30</u> -spices and seasonings; adobo; <u>Class 32</u> - non-alcoholic malt beverages, namely malta.
GOYA*	0764033	<u>Class 29</u> - Coffee and edible olive oil.
...IF IT IS GOYA IT HAS TO BE GOOD*	3001516	<u>Class 30</u> - Tomato sauce; salad dressing; hot sauce, salsa, ketchup; hot pepper spice; alimentary paste, bakery goods, barbecue sauce, biscuits, breadcrumbs, burritos, candy, capers, cereal based snack foods, spices and seasonings, tortilla chips, chocolate for baking, coffee, corn chips, cookies, crackers, custards, empanadas, enchiladas, frozen entrees consisting primarily of rice or pasta, extracts used as flavoring, fajitas, flavoring

		syrup, flour; grain based food beverages, food starch; flavored, sweetened gelatin desserts; honey; noodles; picante sauce, puddings, chili sauce; table syrup, taco chips, tamales; vinegar, cocoa, pastries; rice, prepared entrees consisting primarily of rice, tapioca, yeast, treacle, salt, condiments, namely, sofrito, adobo, sazón, recato, marinades and mojo; wine sauce for cooking; food extracts consisting of a combination of annatto and lard used to flavor and color foods; corn tortilla mix, corn meal, frozen confections, and cornmeal fritter mix; wine vinegar.
...IF IT IS GOYA IT HAS TO BE GOOD and Design*	0942879	<u>Class 29</u> - Canned vegetables.
SI ES GOYA TIENE QUE SER BUENO	1122501	<u>Class 30</u> - Crackers.
SI ES GOYA TIENE QUE SER BUENO	4210054	<u>Class 32</u> - Fruit beverages; Fruit drinks; Fruit-based beverages; Fruit-flavored beverages; Non-alcoholic beverages containing fruit juices.
JOYAS DE GOYA*	1859228	<u>Class 30</u> - Rice, spices, coffee
JOYAS DE GOYA*	1860499	<u>Class 32</u> - Fruit drinks, soft drinks, and syrups for beverages.
GOYA*	1689199	<u>Class 30</u> - Coffee.
GOYA	3640777	<u>Class 43</u> - Carry-out services for restaurants; Catering; Catering of fast-foods in cafeterias; Catering of food and drinks; Restaurant and catering services; Restaurant, bar and catering services, Fast-food restaurants; Food preparation services; Preparation of food and beverages; Restaurant services; Coffee-house and snack-bar services; Snack-bars; Serving food and drinks.

GOYA LATIN CAFE	3654004	Class 43 - Carry-out restaurants; Fast-food restaurants; Fast-food restaurants and snack-bars; Food preparation services; Restaurant services; Snack-bars.
GOYA	3570054	Class 29 -Applesauce; Artichoke paste; Bouillon; Cheese; Cheese food; Chili; Cranberry sauce; Dairy products excluding ice cream, ice milk and frozen yogurt; Dried fruit and vegetables; Dried fruit mixes; Dried fruits; Dried meat; Edible fats; Edible oils; Fish; Fish croquettes; Frozen fruits; Frozen vegetables; Fruit paste; Fruit preserves; Fruit-based snack food; Instant or pre-cooked soup; Jams; Lard; Meat; Meat extracts; Milk; Olive oil; Pickled vegetables; Pork; Pork rinds; Poultry; Preserved fruits; Processed artichokes; Processed coconut; Processed meat; Processed olives; Processed vegetables; Seafood; Snack mix consisting primarily of processed fruits, processed nuts and/or raisins; Soups; Vegetable chips; vegetable oils;

		<p>Vegetable- based snack foods; vegetable, fish, and meat croquettes.</p> <p><u>Class 30</u> - Alimentary paste; Bakery desserts; Bakery goods; Barbecue sauce; Burritos; Candy; Capers; Chocolate; Chocolates and chocolate based ready to eat candies and snacks; Cocoa; Coffee; Corn fritters; Custards; Dumplings; Empanadas; Enchiladas; Fajats; Fish dumplings; Flour; Food seasonings; Frozen confections; Grain-based food beverages; Grain-based snack foods; Hominy; Honey; Hot sauce; Marinades; Mixes for bakery goods; Mixes for making baking batters; Mixes for making batter for hushpuppies; Mixes for making batters for fried foods; Noodles; Pastries; Pepper; Picante sauce; Rice; Rice- based snack foods; Salsa; Sauces; Seasoned coating for meat, fish, poultry; Seasoned coating mixtures for foods; Seasonings; Snack cakes; Spices; Taco chips; Tacos; Tamales; Tapioca; Tomato sauce; Tortilla chips; Tortillas; Vinegar; Wine vinegar.</p> <p><u>Class 32</u> - Fruit nectars; Fruits drinks and fruit juices; Non-alcoholic malt beverage; Soft drinks; Syrups for making soft drinks; Vegetable juice.</p>
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GOYA	3825092	Class 35 - Computerized on-line retail store services in the field of foods and beverages; Retail grocery stores; Retail store services featuring foods and beverages.
GOYA*	1695011	Class 43 - Catering services.
GOYA*	0962193	Classes 29, 30, 32 - Beef stew, vienna sausage, canned fruit juices, cereal, cornmeal, hominy, crackers, edible oils, com oil, olive oil, fruit syrup, sesame seed syrup, grape juice, jellies and preserves, mayonnaise, olives, rice, soups, spaghetti, spices, salt, pepper, oregano, vinegar, flavoring extracts, meat sauce, sweet chocolate, tomato sauce, cheese, cream of coconut, canned vegetables, papaya nectar, peach nectar, guava nectar, spaghetti and meat balls, meat sauce and condiment, breadfruit; prepared seafood - namely, shrimp, spiced shrimp, and lobster gumbo, canned fish, pasteles, Puerto rican sancocho, fruit cocktail, prepared coconut, and flan custard.
GOYA*	1283430	Class 25 - Hats, Jackets and Shirts
GOYA*	2653723	Class 16 - Pens, posters, aprons, drinking utensils and cookbooks.

*Designates an incontestable registration.

11. Opposer's GOYA mark and name has been in continuous, open, and notorious use in the United States from 1936 to the present date.

12. Opposer's GOYA mark and name has been continuously and widely advertised and promoted in the United States from 1936 to the present date and is and has been used in conjunction with and in sponsorship of many civic, cultural and artistic activities.

13. As a result of long use, widespread advertising and promotion, and successful sales, advertising and promotion for over sixty years, Opposer's GOYA mark has become distinctive and famous, long prior to the date Applicant filed the application in issue and long prior to any date of use that may be claimed by Applicant.

14. As a result of the expenditure by Opposer of substantial sums in establishing, maintaining, and policing the GOYA mark and trade name as a symbol of Opposer, its quality products and services, the trade and purchasing public have come to recognize the mark GOYA as distinctive of Opposer's quality products and services and as indicating the sole source of those products and services.

15. The use by Opposer of the Opposer's Marks for the Opposer's Goods and Services alleged herein is long prior to any date which may be lawfully claimed by Applicant, and Opposer has priority.

16. Upon information and belief, Applicant promotes Applicant's Services through the same channels of trade as Opposer, and directs its respective goods to the same ultimate consumer as Opposer.

17. The goods of Applicant and Opposer are substantially identical in part, and related in part, and Applicant's intended use of Applicant's Mark in connection with Applicant's Services is without the consent or permission of Opposer.

COUNT I

LIKELIHOOD OF CONFUSION

18. Applicant's Mark is confusingly similar to Opposer's Mark and trade name.

19. Since Opposer owns the mark and name GOYA and variations of the same by virtue of prior use, mistake or deception as to the source of origin of the goods will arise and will injure and damage the Opposer and its goodwill.

20. The registration of Applicant's Mark to Applicant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Applicant's Goods are made by, licensed by, controlled by, sponsored by, or in some way connected, related or associated with Opposer, all to Opposer's irreparable damage.

COUNT II

DILUTION

21. Opposer repeats and re-alleges paragraphs 1 to 20 above with the same force and effect as if set forth herein at length.

22. Opposer's Mark is famous, being widely recognized by the general consuming public of the United States as a designation of source of the goods and services of Opposer.

23. The registration of Applicant's Mark to Applicant is likely to cause dilution by the blurring of the distinctiveness of Opposer's GOYA Mark and name, all to Opposer's irreparable damage.

24. Opposer's customers have come to recognize that Opposer produces a wide array of goods and services under Opposer's Mark, such that the inevitable association of Applicant's

Goods is likely to cause dilution by tarnishment, thus harming the reputation of Opposer and its famous GOYA Mark.

COUNT III

FRAUD IN THE USPTO

25. Opposer repeats and re-alleges paragraphs 1 to 24 above with the same force and effect as if set forth herein at length.

26. Applicant's Applications, Applicant, having no bona-fide intent to use Applicant's Mark, knowingly made a false and fraudulent statement in Applicant's Applications wherein it falsely claimed, "The applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services" for Applicant's Services in International Class 035.

27. Applicant knowingly did not have a bona fide intent to use Applicant's Mark as Applicant has not taken steps to commence use its Mark on Applicant's Services.

28. The false and fraudulent declaration referred to above with respect to Applicant's Mark was made by Applicant with actual knowledge of its falsity, and was not made on information and belief and was made by a person or entity who knew or should have known the same was false and fraudulent.

29. Applicant knowingly made a false, material misrepresentation of fact in connection with Applicant's Applications when it made the false and fraudulent declaration referred to above.

30. The false and fraudulent declaration referred to above with respect to Applicant's Mark was made with the intent to deceive the USPTO and that the USPTO rely upon the same.

31. The USPTO did rely on the false and fraudulent declaration when it acknowledged the filing of the application and allowed Applicant's Applications to publish.

32. As a result, Applicant willfully and knowingly perpetrated a fraud for Applicant's Mark on the United States Patent and Trademark Office.

33. Applicant is not entitled to Registrations on the Principal Register of Applicant's Mark as Applicant has never had any legitimate interest in Applicant's Mark, Applicant never had a bona-fide intent to use Applicant's Mark, and because Applicant knowingly committed fraud when it filed Applicant's Application.

34. Had it been aware of the false and fraudulent declaration referred to above and of Applicant's knowing fraudulent acts, the USPTO would not have accepted the filing of the application, nor allowed Applicant's Application to publish.

COUNT IV

NO BONA FIDE INTENT TO USE

35. Opposer repeats and re-alleges paragraphs 1 to 34 above with the same force and effect as if set forth herein at length.

36. Applicant's Applications are void ab initio as Applicant had no good faith bona fide intent to use Applicant's Marks for Applicant's Services.

37. Applicant's actions in filing intent to use trademark applications are insufficient to establish a bona fide intent to use Applicant's Marks as applied for.

38. Applicant has taken no steps to begin commercial use of Applicant's Marks either prior to or subsequent to the filing of Applicant's Applications.

39. On August 14, 2013, when Applicant filed Applicant's (word mark) Application, Applicant had no objective bona-fide intent to use Applicant's Mark.

40. On September 10, 2013, when Applicant filed Applicant's (design mark) Application, Applicant had no objective bona-fide intent to use Applicant's Mark.

41. Opposer believes that it is and will be damaged by registration of the marks applied for by Applicant.

42. Upon information and belief, service is proper upon Applicant as follows:

DENNIE F. GLEASON
JARDIM MEISNER & SUSSEY
30B VREELAND RD STE 201
FLORHAM PARK, NJ 07932-1926

WHEREFORE, Opposer prays that the applications for registration of Applicant's Mark filed on August 14, 2013 for GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION (Ser. No. 86037364 for the word mark), and Applicant's Mark filed on September 10, 2013 for GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION (Ser. No. 86060111 for the design mark), be denied and that this Notice of Opposition be sustained.

Dated: March 31, 2014

Respectfully submitted for Opposer,
GOYA FOODS, INC.

By:




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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's Notice of Opposition by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 31th day of April 2014 to the attorney for the Applicant at the following address:

DENNIE F. GLEASON
JARDIM MEISNER & SUSSER
30B VREELAND RD STE 201
FLORHAM PARK, NJ 07932-1926



Stephen L. Baker